

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:PEN:PHI:TL-N-3242-99
JCfee

date:

to: Chief, Quality Measurement Branch, Pennsylvania District
Louis Wentz, Team Coordinator
Attn: Marshall Lyons

from: Assistant District Counsel, Pennsylvania District, Philadelphia

subject:

EIN: [REDACTED]; Tax Year: [REDACTED]
Language For Restricted Consent to Extend Time
to Assess Tax (Form 872)

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

You have requested our advice regarding proposed language for a restricted Form 872. We understand the facts to be as follows:

The taxpayer has filed amended returns (Forms 1120X) for tax years [REDACTED] and [REDACTED] through [REDACTED] on the basis that the tax liability is properly computed under §1341¹. Presumably, years [REDACTED] and [REDACTED] through [REDACTED] are open by statute for purposes of assessment and/or refund. Tax year [REDACTED], the year for which you propose the restricted consent, is open for purposes of making an assessment.

Upon completion of the examination of years [REDACTED] through [REDACTED], the Examination Division issued a Revenue Agent's Report (RAR) which showed that the effect of adjustments for those years resulted in alternative

¹ We understand that you have sought legal assistance from our Pittsburgh office regarding the propriety of the taxpayer's §1341 claim.

minimum tax for [REDACTED] and [REDACTED]. According to the taxpayer's proposed tax computations upon which the Forms 1120X are based, the §1341 treatment for years [REDACTED] through [REDACTED] serves to eliminate the taxpayer's alternative minimum tax for [REDACTED] and [REDACTED], as previously determined in the RAR. The elimination of the alternative minimum tax in turn serves to reduce the AMT credit that was used, according to the RAR, in [REDACTED]. The effect of the reduction of the AMT credit has the corresponding effect of creating tax due in [REDACTED].

Initially, we agree with you that a Form 872 should be secured for [REDACTED]. We have found no authority which provides a sufficient level of assurance that the Service could timely make the collateral assessment for [REDACTED] if a §1341 computation is determined to be proper for the prior years. For example, the Service would likely not be able to avail itself of the mitigation provisions of §1311 through §1314 because, inter alia, the AMT credit adjustment is not to be one of the enumerated circumstances under §1312 for which §1311 will apply and the [REDACTED] year is presently open for making any necessary corrections. We concur that you should take a conservative approach and secure a consent.

With respect to the restrictive language, we suggest the following:

The amount of any deficiency assessment is to be limited to that resulting from any change to the taxpayer's computation of tax for taxable years [REDACTED] through [REDACTED], made pursuant to §1341, including any consequential changes to any item based on such change in the taxpayer's computation of tax under §1341.

We understand that your manual suggests that in drafting restrictive language, you should refrain from including specific code sections which may cause the stated restriction to be construed more narrowly than intended. See, IRM §4541.72. However, we feel that the restriction is most clearly expressed in this case by reference to Section 1341. We do not believe that inclusion of this code citation could result in an unfairly narrow reading of the restriction.

Lastly, we are constrained to urge you to take extreme care in reviewing the taxpayer's computations, particularly with respect to the interplay of §1341(a)(5) and the alternative minimum tax. While you have not requested us to review the accuracy of the computations, assuming §1341 is available, we alert you to a recent Field Service Advice that illustrates the complexity of the computation. See, FSA 199921001 (December 28, 1998), 1999 TNT 104-59 which concludes that a taxpayer qualifying for §1341 treatment could not reduce both regular

tax and AMT. Rather, the correct calculation would increase AMT.

This concludes our advice and recommendation. Please feel free to call Attorney James C. Fee, Jr. at 215-597-3442 with any additional questions you may have. We are forwarding a copy of this advice to the Assistant Regional Counsel (Tax Litigation) (CC:NER) and to the Office of Assistant Chief Counsel (Field Service) (CC:DOM:FS) for mandatory 10 day post review. To assure that the National Office has had sufficient time to review our advice, we request that you refrain from taking any action with respect to the taxpayer's claim prior to August 10, 1999.

JOSEPH M. ABELE
Assistant District Counsel

cc: Assistant Regional Counsel (Tax Litigation) (CC:NER)
Office of Assistant Chief Counsel (Field Service) (CC:DOM:FS)